

§ 203.251

of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement or Lender Insurance underwriter.

[62 FR 30226, June 2, 1997]

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) *Commissioner* means the Federal Housing Commissioner or his authorized representative.

(b) *Act* means the National Housing Act, as amended.

(c) *FHA* means the Federal Housing Administration.

(d) *Mortgage* is defined at § 203.17(a)(1).

(e) *Mortgagor* means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) *Mortgagee* means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g)-(h) [Reserved]

(i) *Insured mortgage* means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument for insurance by the Commissioner.

(j) *Contract of Insurance* means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and the applicable provisions of the Act.

(k) *MIP* means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

(l)-(m) [Reserved]

(n) *Open-end advance* means an insured advance made by an approved mortgagee in connection with a pre-

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viously insured mortgage, pursuant to an open-end provision in the mortgage.

(o) *Open-end insurance charge* means the charge paid by the mortgagee to the Commissioner in consideration of the insurance of an open-end advance.

(p) *Beginning of amortization* means the date one month prior to the date of the first monthly payment to principal and interest.

(q) *Maturity* means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(r) *Debentures* means registered, transferable securities in certificated or book entry form which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

(s) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 8661, Apr. 29, 1972; 41 FR 49734, Nov. 10, 1976; 49 FR 12697, Mar. 30, 1984; 53 FR 34282, Sept. 6, 1988; 59 FR 49815, Sept. 30, 1994; 61 FR 36265, July 9, 1996]

ENDORSEMENT AND CONTRACT OF INSURANCE

§ 203.255 Insurance of mortgage.

(a) *Mortgages with firm commitments.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, or under the Lender Insurance program under § 203.6, the Secretary will either endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment, or will electronically acknowledge that the mortgage has been insured.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the Direct Endorsement program under § 203.5, the mortgagee

shall submit to the Secretary, within 60 days after the date of closing of the loan or such additional time as permitted by the Secretary, properly completed documentation and certifications as listed in this paragraph (b):

(1) Property appraisal upon a form meeting the requirements of the Secretary, or a HUD conditional commitment (for proposed construction only) or a Department of Veterans Affairs certificate of reasonable value, and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage in a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with HUD underwriting requirements, and incorporating each of the underwriter certification items which apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees, except that where an automated underwriting system (AUS) approved by the Secretary or Commissioner is used by the lender, and the AUS has determined that the application represents an acceptable risk under terms and conditions agreed to by the FHA, a Direct Endorsement underwriter shall not be required to certify that he/she has personally reviewed the credit application (including the analysis performed on any worksheets);

(6) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(7) Where applicable, a certificate of intent to occupy by military personnel;

(8) Where a mortgage for an existing property is to be insured under section

221(d)(2) of the National Housing Act, a letter from the appropriate local government official that the property meets applicable code requirements;

(9) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with §200.926d(f) of this chapter;

(10) For proposed construction if the mortgage (excluding financed mortgage insurance premium) exceeds a 90 percent loan to value ratio, evidence that the mortgagee qualifies for a higher ratio loan under one of the applicable provisions in the appropriate regulations;

(11) A mortgagee certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of this paragraph (b). The certification shall incorporate each of the mortgagee certification items which apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(12) For a Home Equity Conversion Mortgage under part 206 of this chapter, the additional documents required by §206.15 of this chapter; and

(13) Such other documents as the Secretary may require.

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents and determine that:

(1) The mortgage is executed on a form which meets the requirements of the Secretary;

(2) The mortgage maturity meets the requirements of the applicable program;

(3) The stated mortgage amount does not exceed the maximum mortgage amount for the area as most recently announced by the Secretary, except for mortgages under 24 CFR part 206;

(4) All documents required by paragraph (b) of this section are submitted;

(5) All necessary certifications are made in accordance with paragraph (b) of this section;

(6) There is no mortgage insurance premium, late charge or interest due to the Secretary; and

(7) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing whether the mortgage shows an acceptable payment history.

In addition, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the au-

thority of the mortgagee to participate in the Direct Endorsement program pursuant to § 203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

(f) *Lender Insurance*—(1) *Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under § 203.6, the mortgagee is responsible for performing a pre-insurance review that meets HUD's requirements. HUD will directly inform participating mortgagees of its minimum requirements for pre-insurance review. The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

(2) *Recordkeeping.* Mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

(3) *Insuring the mortgage.* If, following this review, the mortgage is determined to be eligible, the mortgagee will electronically submit all required data to HUD regarding the mortgage. HUD's electronic system will acknowledge that the mortgage has been insured. HUD's electronic system may also issue a notice to the mortgagee that the mortgage has been selected for post-insurance technical review, and that the HUD case binder must be sent to the identified HUD office.

(4) *Indemnification.* By insuring the mortgage, the mortgagee agrees to indemnify HUD under the conditions of section 256(c) of the National Housing Act (12 U.S.C. 1717z-21(c)).

[57 FR 58348, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993, as amended at 60 FR 42759, Aug. 16, 1995; 61 FR 36265, July 9, 1996; 62 FR 30227, June 2, 1997; 63 FR 29507, May 29, 1998]

EFFECTIVE DATE NOTE: At 62 FR 30227, June 2, 1997, paragraph (f) was added to § 203.255. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.